IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11131 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATISHBHAI PRAHLADBHAI AGARWALPROP.SWAYEKA EXPORTS

Versus

MANISHKUMAR KARSANBHAI RASHTRIYA SANGHARSH LABOUR

Appearance:

1. Special Civil Application No. 11131 of 2001

MR PJ MEHTA for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07/10/2002

ORAL JUDGEMENT

The present Special Civil Application is filed challenging the order passed by the learned Judge of the

Labour Court in restoration application being Misc. Civil Application No.144 of 2001 filed in Payment of Wages Application No.224 of 2000. The grievance ventilated in this Special Civil Application is that the learned Judge of the Labour Court committed an error in awarding cost of Rs.10,000/-, while allowing the aforesaid Misc. Civil Application for restoration of the main Payment of Wages Application.

2. It will be necessary to note that one Manishkumar Karsanbhai filed Payment of Wages Application No.224 of 2000 against the petitioner. Said application was filed in the year 2000 and the authority under Payment of Wages Act, Ahmedabad has recorded in para 3 of the judgement and order dated 7.4.2001 that notice issued by the authority to the respondent therein was served and in response to that, the learned advocate Mr.S.K. Malkan has filed Vakalatnama at exh.12. Para 4 says that the respondent therein did not file any reply and therefore, his right to file reply was closed. It is further stated that the deposition of the applicant was recorded at exh.14, but as the respondent was not present for cross examination his right to cross examination was closed. Even thereafter the respondent did not remain present. Therefore, the authority was left with no alternative but to close his right of leading evidence or examining any witness. The Court allowed that application and ordered the respondent to pay a sum of Rs.71,048.80 paise and penalty at 10% of the above sum with interest at the rate of 18% till the date of payment of the aforesaid amount with cost of Rs.2,500/-. This order was passed on 7.4.2001, in an application of the year 2000. Thereafter, restoration application being Misc. Civil Application No.144 of 2001 was filed which was allowed by the learned Judge of the Labour Court. By setting aside the ex parte order, the Court awarded a cost of Rs.10,000/- to the workman and fixed further hearing of the main application on 27.11.2001. The order under challenge was passed on 6.10.2001. Taking into consideration the amount awarded, i.e. Rs.71,048.80 awarded in a Payment of Wages Application and for the delay in payment of the same of two years the learned Judge ordered for cost of Rs.10,000/-.

3. By any standard the amount of cost is not exorbitant. The learned advocate appearing for the petitioner submitted that the learned Judge is at par with the Civil Judge (Junior Division), when he is in his first five years of service. When he crosses five years of service upto 10 years, he is at par with Civil Judge (Senior Division). The learned advocate also argued that

taking parity on criminal side, the learned Judge of Labour Court is equivalent to Judicial Magistrate (First Class). He submitted that the learned Labour Judge is also clothed with the powers under sec.193 to 228 of Indian Penal Code and that is one of the reasons to draw parity between the learned Judge of the Labour Court and the JMFC.

4. He emphatically submitted that sec.35 of the Code of Civil Procedure, 1908 provides for cost which reads as under:

> "35. Costs -- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.
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> (2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing."

4.1 He submitted that taking a simile from the provisions of sec.35 of the Code of Civil Procedure, the learned Labour Judge ought not to have awarded cost of Rs.10,000/-. When it was put to the learned advocate as to whether there is any provision within his knowledge which circumscribes the discretion of the learned Judge of the Labour Court in awarding the cost, he submitted that except the aforesaid simile, sec.35 of the Code of Civil Procedure, which says that cost is the matter of discretion of the Court, there is no specific provision, but then the Court should exercise the discretion taking into consideration the fact that he is equivalent to a Civil Judge (JD), he should not have awarded the cost as is awarded by the Honourable the Apex Court in some matters.

5. Not only the petition, even the arguments are thoroughly misconceived in this matter. Instead of justifying the defence on account of which the respondent employer-- the petitioner herein could not or did not remain present before the authority, an attempt is made to criticize the learned Judge by saying that the order

awarding cost is arbitrary, ex facie bad, exorbitant and not sustainable in law. All these adjectives are misplaced and unwarranted. Instead of submitting that despite the present circumstances and despite genuine and bona fide attempt on the part of the petitioner employer he could not remain present before the Payment of Wages Authority, a misguided attempt is made to criticize the learned Judge, that too by pleading parity with the Civil Judge (JD) and/ or JMFC, which is totally misconceived.

6. The learned advocate has also pressed into service sec.6 of the Code of Civil Procedure which provides for pecuniary jurisdiction, which reads as under:

> "6. Pecuniary jurisdiction -- Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction."

6.1 He submitted that as sec.6 of Civil Procedure Code circumscribes the pecuniary jurisdiction of the Court, a simile should be drawn from the same to consider that there is similar circumscription on the powers of awarding cost. This argument is also without any basis in law. Hence the same is rejected.

7. The Special Civil Application is dismissed with cost of Rs.7,500/-, (Rupees seven thousand and five hundred only). The amount of cost as and when deposited shall be paid to the workman. Rule is discharged.

(Ravi R. Tripathi, J.)

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